

PLM-11

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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-197104

DATE: February 6, 1980

MATTER OF: Richard J. King

**DIGEST:** Department of Air Force civilian employee assigned to overseas duty station resigned his position and returned to United States before expiration of his 3-year service agreement. The agency did not pay the cost of return under a determination that the reasons for his return were not acceptable. The acceptability of the reasons for an employee's resignation prior to completion of his agreed period of service pursuant to 5 U.S.C. 5722 (1976), is for determination by the agency involved and a determination will not be questioned unless the facts establish that the determination was arbitrary and capricious. 56 Comp. Gen. 606 (1977).

The issue presented on [appeal ~~from~~ a settlement] of our Claims Division is whether an employee may be reimbursed the expenses of return transportation from an overseas assignment when the employee resigns his position and returns to the United States before expiration of a 3-year service agreement. Unless the failure to fulfill the agreement was for reasons beyond the control of the employee which reasons are acceptable to the agency, there is no authority for reimbursement by the Government for return travel and transportation.

Richard J. King, a civilian employee of the Department of the Air Force, was assigned to a duty station in The Netherlands by travel orders dated August 15, 1975. Mr. King signed a transportation agreement dated August 5, 1975, wherein he agreed to remain in the overseas assignment for 36 months for the purpose of establishing his eligibility for return travel and transportation at Government expense. Shortly after his arrival in ~~The~~

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*Reclamation*  
~~Netherlands~~ he was given a job reassignment as a result of an office reorganization effective November 23, 1975. Mr. King subsequently requested that his transportation agreement be waived *and* he also filed a grievance based upon his contention that since the position for which he was recruited and assigned was abolished, reduction-in-force (RIF) action should have been initiated. Further, he stated that he did not consent to the change in occupational series which resulted from the reassignment. In a letter dated July 7, 1976, his grievance was denied. His request for waiver of the transportation agreement was denied by letters dated February 25, 1976, and June 30, 1976. By letter dated June 24, 1976, Mr. King requested approval to exercise return rights to Williams Air Force Base, Arizona. He submitted his resignation from the overseas position effective September 11, 1976. Since his transportation agreement had not been voided he was advised that return transportation of a privately owned vehicle as well as transportation for himself and his dependents and household goods was at his expense.

Mr. King submitted a claim for return travel and transportation expenses in the amount of \$8,624.30. The claim was denied by the Air Force on the basis that there was no indication that he was released from the overseas service requirement for acceptable reasons.

The controlling statutory provisions concerning Mr. King's transportation are found in 5 U.S.C. 5722 (1976) which reads, in part, as follows:

"(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations--

\* \* \* \* \*

"(2) these [travel and transportation] expenses on the return of an employee from his post of duty outside the continental United States to the place of his actual residence at the

time of assignment to duty outside the United States.

\* \* \* \* \*

"(c) An agency may pay expenses under subsection (a)(2) of this section only after the individual has served a minimum period of--

\* \* \* \* \*

"(2) not less than one nor more than 3 years prescribed in advance by the head of the agency \* \* \*

unless separated for reasons beyond his control which are acceptable to the agency concerned. These expenses are payable whether the separation is for Government purposes or for personal convenience."  
(Underscoring supplied.)

As may be observed from the quoted language of the statute the basis for payment by an agency of the United States of the expenses of return travel and transportation of an employee, prior to the completion of his agreed period of service, is confined to the situation where the employee is "separated for reasons beyond his control which are acceptable to the agency concerned."

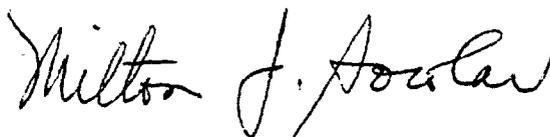
The acceptability of the reasons for Mr. King's premature resignation primarily is for determination by the Department of the Air Force and its determination is reviewable by our Office only if the facts establish that it is arbitrary or capricious. 56 Comp. Gen. 606 (1977); B-191081, July 26, 1978; B-170392, August 5, 1970; B-169880, July 6, 1970; and B-160646, March 10, 1967.

The record does not support Mr. King's contention that his reason for resigning his overseas position was acceptable and that he should have been permitted to

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void the transportation agreement. The grievance examiner pointed out that the reorganization of the personnel office to which Mr. King was assigned did not result in his separation, furlough or involvement in a reassignment involving displacement. He was reassigned to a vacant position, thus no displacement was involved and no RIF notice was required. Based on all the facts presented we cannot say that the administrative conclusion of the Air Force that Mr. King's reason for separation was not acceptable nor one beyond his control was unreasonable, not supported by the evidence or that it was without factual foundation. Therefore, we may not substitute our judgment for that of the Department of the Air Force on the ground that its conclusion was arbitrary or capricious and consequently may not direct the allowance of Mr. King's claim for reimbursement of transportation expenses.

Accordingly, the settlement of the Claims Division which disallowed Mr. King's claim for transportation expenses on his return from an overseas assignment is sustained.



For the Comptroller General  
of the United States